

# **Alabama Sentencing Commission**

## **Minutes of Commission Meeting September 30, 2005**

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, September 30, 2005. Present at the meeting were:

### **Commission Members**

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Vernon Barnett, Legal Advisor to the Governor, Montgomery  
Hon. Terri Bozeman, District Judge, Lowndes  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Hon. Ben McLauchlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark  
Stephen Nodine, Mobile County Commissioner, Mobile  
Bill Segrest, Executive Director, Pardons and Paroles, Montgomery

### **Advisory Council**

Denis Devane, Prison Fellowship, Birmingham  
Doris Dease, Network Victim Services  
Joe Mahoney, Director, Mobile County Community Corrections

### **Staff**

Lynda Flynt, Executive Director  
Melisa Morrison, Research Analyst  
Bennet Wright, Statistician

### **Others Attending**

Eddie Cook, Pardons and Paroles  
Cynthia Dillard, Pardons and Paroles  
Steve Hayes, Department of Corrections, Montgomery  
David Horn, Shelby County Community Corrections  
Shelly Linderman, VOCAL  
Miriam Shehane, VOCAL  
Hon. Marvin Wiggins, 4<sup>th</sup> Circuit  
Jeff Williams, Department of Corrections, Montgomery

### **Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m. with Chairman Colquitt calling the meeting to order and making introductory remarks. Welcoming everyone to the meeting, Chairman Colquitt noted that it had been a while since the members had gotten together as a group, but remarked that there had been a lot of work going on by the Commission staff in the

interim which would be discussed during the meeting. Reviewing the agenda, he advised the members that there was a lot of business to cover and that votes were needed on several matters. He asked the Commission for their careful attention in reviewing the reports presented by the committees.

Chairman Colquitt explained that the Commission was going to hear reports from the Legislative Committee, Sentencing Standards Committee and the Governor's Prison Chairman Colquitt welcomed those that were in attendance as guests of the Commission, noting that the Commission meetings were always open to the public. He reminded them that during the actual meeting of the Commission, floor privileges belonged to the Commission members; however, upon request, groups that wanted to address the Commission could be included on the agenda.

Overcrowding Task Force. He stated that although the Governor's Prison Overcrowding Task Force was not a part of the Sentencing Commission, it was working on some of the same types of concerns that the Commission is addressing with regard to what we should do about crime in the state and the problems that confront our criminal justice system. He advised that the Commission would also hear from the Department of Corrections' Community Corrections Division and at lunch and that Joe Mahoney, President of the Alabama Association of Community Corrections would give a community corrections update. In addition, the Commission would be brought up to date on the new sex offender act that goes into the next day, October 1, 2005.

### **Report of Legislative Committee**

Dr. Lou Harris, Chair of the Commission's Legislative Committee presented the committee's report. He directed the Commission's attention to the Legislative Committee minutes which contained an outline of each of the bills discussed and reviewed by the committee, explaining that the committee was bringing the bills to the Commission for confirmation or rejection. Dr. Harris noted that the committee voted not to pursue the Medical and Geriatric Release bill which had been included in last year's package.

Dr. Harris introduced each of the bills and Lynda Flynt followed with a brief summary of each bill's provisions. After all of the bills had been introduced the Commission was asked to vote on each them.

#1 Sentencing Standards Bill – Ms. Flynt requested that Rosa Davis go over the changes in the sentencing standards bill, since this was the bill that was covered in the Standards Committee, which she chaired. Ms. Davis explained that this was the same as the bills that the Commission has introduced in the past two legislative sessions except that the date was changed for implementation of the truth-in-sentencing standards to 2009. The effective date of the initial standards was also changed. She noted that there were originally 27 felony offenses but the sell of marijuana to a minor was changed; therefore the number dropped to 26. The bill was also amended to provide that copies of the standards would be filed with the chairs of the legislative judicial committees, as well as the Supreme Court clerk's office.

Ms. Davis responded with the clerk of the house, clerk of the senate and the clerk of the Supreme Court clerk's office.

Reviewing the proposed bill as amended, Rosa Davis noted that there would be additional changes on Page 1, Line 16 because it will be the worksheets adopted today rather than December 3<sup>rd</sup> and that there was one change recommended in the worksheets. She also advised that the effective date of the voluntary truth-in-sentencing standards would change on Lines 14 & 15 on Page 4 and anywhere else it might appear. This change is necessary because the standards were not adopted last year and the implementation date for both sets of standards had to be delayed.

Bill Segrest noted that the standards are still voluntary, not mandatory, and that this bill does *not* abolish the Board of Pardons and Paroles.

Dr. Harris stated that the committee did not have a problem with the amendments to the bill and approved it for the Commission's consideration.

*#2 Access to Juvenile and YO Records* - This bill amended the juvenile and YO access to records statutes to ensure that judges statewide, prosecutors, probation and parole officers and defense lawyers would have access to juvenile and YO records for the purpose of filling out the standards worksheets. It was explained that this bill went hand-in-hand with the sentencing standards that the Commission was proposing. Ms. Davis commented that these changes conform to changes that were made in the Legislature, when the bill was passed out of the judiciary committees of both houses last session.

*#3 Pardons and Paroles Facility Fees* – This bill authorizes a deduction from wages for restitution from anyone housed in a Pardons and Paroles facility. It comports with the percentage authorized to be deducted from wages under the Community Punishment and Corrections Act. It increases the amount that can be deducted from the gross wages of any person in these facilities from 25% to 45%, to include restitution. This effectively allows deductions of wages comparable to those authorized from offenders in community corrections programs and as now authorized for county work releases.

Judge Rains noted that at one time there was confusion about who collected the money under provisions of the Community Punishment and Corrections Act of 2003 and inquired if this bill specified who was responsible for collecting the money. He was advised that it is clear that this responsibility would fall on Pardons and Paroles since the bill covered only offenders housed in Pardon and Paroles facilities.

*#4 – Amendment of Burglary 1st & 2<sup>nd</sup> Degree Statutes to Eliminate the Loot Rule* - The Commission was told that this was the same legislation that had been introduced before. With these amendments, the burglary offenses specifically apply to unlawful entries in a dwelling or building armed with a weapon or dangerous instrument and to instances in which a weapon or dangerous instrument is used or threatened to be

used during the commission of a burglary rather than where the gun or weapon is merely acquired as a part of the loot.

*#5 – Correction of the Theft of Property II* – Ms. Davis explained that in 2003, at the request of the Sentencing Commission, the Legislature changed the thresholds for Theft I and II. The next year the Legislature inadvertently changed the threshold value of property for Theft 2<sup>nd</sup> back to the preamendment amounts. This left a gap between the value of property included for Theft I and Theft II. The bill the Sentencing Commission is proposing is correcting this mistake and putting the Theft II thresholds back to the amounts they were changed to in 2003.

*#6 – DUI Statute (Out of State Convictions)* – This bill allows the use of out-of-state DUI convictions to be used for enhancement purposes following subsequent convictions under Alabama's DUI Law.

*#7 – Increase in Fines for Felony Offenses* – This bill increases the maximum fines authorized for violations, misdemeanors and felonies. This bill successfully passed the House last year, but died in the Senate. The increases are based on the inflation index and provides the maximum amount of fines which can be imposed. With passage of this bill higher fines will be authorized, but not required, to be imposed.

*#8 – Drug Trafficking Statute* – This bill amends Alabama's Drug Trafficking statute to provide a fine for the most serious trafficking offenses. It also corrects the fine amount for trafficking in at least 4,000 pills or capsules, but less than 10,000 pills or capsules of the drug hydromorphone and amends the statute to include the drug 3,4 methylenedioxy methamphetamine and 5- methoxy – 3,4 methylenedioxy methamphetamine, commonly known as the drug ecstasy.

Ms. Flynt noted that Ellen Brooks pointed out that the trafficking statute needed to be looked at in its entirety. Someone from the Department of Forensic Science pointed out that the statute contained the wrong wording as far as describing the drug ecstasy. Forensic Science provided the correct name for this drug, which has been included in the bill.

*Medical Geriatric Release* - Ms. Flynt stated that the Commission recommended last year not to approve the medical geriatric release and then changed its mind after the bill was introduced by Senator Smitherman. It was noted that there were still several concerns from other departments (Board of Pardons and Paroles & Department of Human Resources) about some of the bill's provisions. Since Bill Segrest with the Board of Pardons and Paroles and the Department of Corrections have administratively implemented a procedure for the geriatric and medical release of qualified inmates, the legislative committee voted not to approve and not to pursue this bill during the next legislative session.

Bill Segrest explained that when Pardons and Paroles is notified from any source (particularly the DOC, a family member of the inmate, or the inmate himself/herself) that

an inmate has a serious medical problem, they ask for a review from DOC's medical services. When the Board receives the diagnosis and prognosis, the executive director or general counsel reviews those reports. The procedures call for the executive director or general counsel to be able to review those cases notwithstanding any other procedures and they can then place those cases before a senior staff review panel. If three of those people agree that person should be considered immediately, or sooner than normal, that committee has the authority to immediately place that case on the Board's docket without any further approval from anyone else. Everything about the docketing process still applies; only the date of that docket consideration has been changed. Mr. Segrest noted that unfortunately, the majority of the people who fall into this category are very serious criminals.

Mr. Segrest reported that recently there were four people put on the docket, but three of them were denied release because of protests by the DAs, AG, and Governor's office. The Board has also received very vigorous protests from the victims of the crimes. The likelihood is that these people are not going to be paroled.

The committee debated the pros and cons of this bill, finally deciding to recommend that this bill not be included in this year's legislative package. Ms. Flynt stated in the committee meeting the members requested that she and Rosa talk with the legislative sponsors, Senator Smitherman and Marcel Black, to make sure that they know the Commission's position.

#### *New Business*

Dr. Harris stated that the legislative committee was bringing eight new bills before the Commission and that at least two of these were new bills. He noted that copies of other bills, two of which were bills the Attorney General was sponsoring, had been provided to them for informational purposes only.

*Split Sentencing* – Ms. Flynt stated that the Commission had a bill that was amending the split sentencing statute following the Court of Criminal Appeals decision in *Hollis*. She explained that the *Hollis* case held that a judge lost jurisdiction over a split sentence after a person had served his or her time of incarceration that upon revocation of the probation portion of the split a judge could not impose another split sentence and his only option was to require the defendant to serve the remaining term of his suspended sentence. The Commission proposed a bill last year to specifically state that a judge retained jurisdiction throughout the entire split; however the problem appeared to be solved after the *Dixon* reversed the *Hollis* opinion. Based on the clarification of the *Dixon* case, the legislative committee recommended not to pursue further amendment of the split sentencing statute.

### *First Felony Offender*

The Commission members were provided with a draft of a first felony offender bill which was patterned after the Youthful Offender Act and reminded that the Commission had voted not to pursue it in years passed. The Legislative committee considered this bill and voted to table this until further study could be done comparing the provisions of the Youthful Offender Act with the provisions of the proposed bill. This bill was presented to the Commission members for information purposes only.

*Habitual Offender* – Two different drafts were provided to Commission members in the past. One was a habitual offender act that only provided enhanced punishment for violent repeat offenders. The other provided enhancements which varied according to the classification of the priors. It was noted that once the standards were adopted and implemented this Act would not be mandatory if judges sentenced according to the standards. No action was taken on this bill based on the view of some committee members that passage of the standards would resolve any problems with the HFOA.

*Good Time* – Ms. Flynt noted that some legislators and family members of prisoners had indicated that the good time statute should be amended. These recommendations started after the split sentencing statute was amended to apply to anyone sentenced to 20 years or less. Lynda explained that the good time statute, as presently worded, only applies to those that have sentences of imprisonment to terms of 15 years or less. This draft bill was provided to the legislative committee for their consideration; however the committee voted to table it.

*Authority to Commute Life without Parole Sentence to Life* – Vernon Barnett of the Governor's Office stated that this bill proposed giving the Governor authority to commute life without parole sentences to life imprisonment. The consensus among the members of the legislative committee was that this authority should be given to the Board of Pardons and Paroles since they already have a procedure established for assessing whether or not someone should be granted parole or commuted etc. The committee voted not to take any action on this bill.

*Victim Notification* – Ms. Flynt advised Commission members that a meeting had been scheduled with Miriam Shehane, victim advocates, representatives from the Governor's office and Board of Pardons and Paroles to go over the notification statute. She stated that the draft bill was provided to Commission members for informational purposes only.

In discussing the problems the Board of Pardons and Paroles was having locating victims and the family members of victims to notify them of hearings, Chairman Colquitt suggested that they might wish to consider the rules of civil procedure and providing notice by publication if all other efforts of notification have failed.

Mr. Segrest noted that the Board's website has the alphabetical listing of the hearings within a six week period. The statute presently does not allow the Board to provide notice by publication in a local newspaper.

#### *Requiring Pre-sentence Investigation Reports*

Ms. Flynt noted this bill is presented for informational purposes only at this time. She stated there is a need for pre-sentence investigation reports for every felony conviction both for case information and for statistical purposes.

#### *Child Pornography*

This bill is planned as a part of the Attorney General's legislative package. Ms. Flynt noted that this bill has been introduced before and will be introduced again this session. The bill makes every visual depiction of pornography a separate offense, thereby increasing the number of charges, convictions, and sentences in every case in which more than one picture or image is present. Under current law possession of a number of visual depictions at the same time is considered but one offense. This bill was distributed to Commission members for informational purposes only.

#### *Meth Lab Endangering a Child*

Again, this bill is a part of the Attorney General's legislative package. Ms. Flynt noted the only fiscal impact of this bill would be associated with those convictions in which a child has been exposed to a meth lab but was not injured, now a misdemeanor, child endangerment. The AG may change and modify some of the provisions. This bill was distributed to Commission members for informational purposes only.

Chairman Colquitt stated that in keeping with the charge of the Commission that when dealing with proposals of substantive criminal law the Commission's expertise is usually to give some insight in what the impact of the bill would be. It is entirely appropriate that governmental agencies may ask the Commission if it can give them information concerning the impact of a particular piece of legislation. On the other hand, it would normally not be within the charge of this Commission to be rewriting the criminal code. Insofar as the AG's office has asked for the Commission's expert advice with regard to impact that's entirely appropriate.

Dr. Harris noted that the committee took no action on the Attorney General's bills, voting to table them for further discussion.

(Ms Flynt recognized and welcomed Randy Helm, Administrative Director of Courts to the meeting.)

Dr. Harris noted that some Commission members had suggested that there be more representation of the defense bar on the legislative committee. He noted that Judge Bush served on the legislative committee and had been very active.

#### **Commission Vote on Bills**

##### *Sentencing Standards Bill*

Chairman Colquitt stated that the Commission has already approved the Standards bill and it has been introduced in the past sessions. The date has been changed for implementation of truth-in-sentencing. Majority approved. Passed.

*Access to Juvenile Youthful Offender Records* - This would be reapproval of a bill that the Commission has already approved in the past. There are some changes in here conforming to the changes that were made by the legislature in the proposed bill last time. Majority Favored. Passed

*Pardons and Paroles Facility Fees* –This is a reapproval. There are some changes so that the amounts involved are the same as the community corrections legislation. Majority Favored. Passed

*Amendment of the Loot Rule* – This is the same bill previously approved by the Commission. Majority Favored. Passed

*Correction of Theft of Property Statute* – This bill corrects a legislative error in amending wording in the theft of property second degree statute. Majority favored. Passed

*Allows the Consideration of Out of State Convictions with Regard to Drug/DUI Statute* – This Commission has approved this bill in the pass to clarify or correct a decision out of the appellate courts with regard to the wording of the DUI statute. This bill allows out of state convictions to be counted for felony DUI purposes. Majority favored. Passed

*The Adjustment in the Maximum Fine Available for Felony Offenses* – This is a correction or amendment primarily for inflation purposes to bring provisions that the Alabama criminal code provisions which became effective 25 years ago on January 1, 1980. The bill authorizes but does not mandate increased fines in all felonies. Majority Favored. Passed

*Reapproval of the Drug Trafficking Amendment* - The bill clarifies that the drug “ecstasy” is covered in the trafficking statute, includes the addition of fines for the most serious offenses, and corrects some errors in the original wording of the statute. Majority favored. Passed

*Medical Geriatric Release* – The Committee recommends that the Commission not include this bill in the legislative package this year. The matter is now handled through procedures implement by the Board of Pardons and Paroles. Chairman Colquitt asked if any member of the Commission wanted to make a motion that the Commission approve the geriatric release bill. No motion was forthcoming and this bill will not be included in the package.

In the new business area there are one or two things the Commission would need to look at. Most of these were information only.

*Sharing Access to Criminal Data between Various Agencies*

The Commission was asked to approve the concept of sharing access to criminal data between various agencies to ask the staff to draft legislation accomplishing this purpose.



By a majority vote, the Commission approved the concept and asked the staff to draft a bill.

*Victim's Notification* – The staff is still working with victim's groups and the Board of Pardons and Paroles in an effort to reach an agreement on modifying victim notification by making such notification less cumbersome for the board while accomplishing the purpose of notification. No agreement has been reached as of this date, however the staff is continuing to work on the bill..

*Pre-Sentence bill* – This was presented to the Commission for informational purposes only.

Ms. Brooks reported that she met with the Chief Police of Montgomery about a big concern regarding children with guns. They looked at various proposals. Ms. Brooks does not think anything is going to move forward to the legislature except possibly an amendment to the receiving statute that would make possession of a stolen gun a felony.

#### **Report of Sentencing Standards Committee**

Rosa Davis reported the Standards committee met and considered three matters concerning the standards. The first matter was an adjustment to the drug prison in/out worksheet raising the score for possession or use of a deadly weapon or dangerous instrument from one to two so that if a gun is used or brandished by the offender during a sale or distribution offense the recommended disposition of sentence would be prison. That was a suggestion made by the attorney general and approved by the committee. With this change, the committee asked that the initial sentencing standards instructions and worksheets be readopted and redated as the Alabama Sentencing Commission's Initial Sentencing Standards Instructions and Worksheets on September 30, 2005.

Chairman Colquitt asked the Commission for a vote on the Sentencing Standards Committee report. He noted that there was one change with regard to two points rather than one point on an evaluation. Majority favored. Passed.

Ms. Davis noted that two other changes were suggested by the Attorney General but were not adopted by the Committee. The first suggestion was that the word possession be taken out of the phrase possession/use of a deadly weapon or dangerous instrument. The reason the Committee did not make this change was to leave that point open for discussion during sentencing. The proposal of the Attorney General was to add a provision to the Standards statute to require the sunset of these standards if the truth-in-sentencing standards are not passed in 2009. The Committee tabled that suggestion at this time because these standards are designed to affect sentencing disparity while eventually leading to truth-in-sentencing.

#### **Report of Governor's Prison Overcrowding Task Force**

Vernon Barnett, Assistant Legal Advisor to the Governor reported for the Governor's Task Force. He stated that everyone on the task force was very impressed with the Sentencing Commission's legislation.

Mr. Barnett reported. the task force has considered the expansion of the transition centers, including at least three transition centers, similar to Life Tech that services the women at Tutwiler, for men coming out of prison and the implementation of a technical violator center. He noted there are about 1200-1500 inmates coming back into prisons every year for technical violations of parole. Rather than bringing these inmates back into the prison system for sometimes three years or five years the offenders would be placed in a technical violator center programmed to address the technical violations. The centers would include drug treatment and counseling—the same opportunities afforded by the transition centers. These centers would allow offenders to continue rehabilitation under closer supervision while maintaining contact with their families and, possibly, their employment.

Mr. Barnett stated the possibility of additional prisons is also under consideration. However, with the financial situation of the state additional prisons will be incredibly difficult to accomplish.

Mr. Barnett reported the task force is taking a very strong look at community corrections. A number of the task force members are very interested in seeing new ways to expand those programs working with the circuit court judges and including the expansion of the drug court and the mental health court programs.

Mr. Barnett announced there has been tremendous input and cooperation from Dr. Johnson in Post Secondary Education, and from Mental Health, Pardons and Paroles, and various other groups that have come to the table and offered their resources. He noted also the Vera Institute of Justice experts from different states that were more than willing to talk about not only where they had succeeded but where they failed in attempting sentencing and prison reform.

The last meeting of the task force will be held the second week in October. The task force will submit its report at the October meeting. That report will go to the Governor and he has indicated that he will act very swiftly on it.

### **Report from DOC Community Corrections Division**

Jeffery Williams, Director of the DOC Community Corrections Division announced a special diversion program increasing the amount paid for the diversion of certain convicted offenders. Mr. Williams stated this special program is not a departure from DOCs current policy but provides an opportunity effort to divert more offenders. He gave a brief overview of what this special diversion program entails. Currently DOC converses at a rate of \$10.00 per day for an offender diverted from one of its facilities. The first six months DOC pays the program \$10.00 per day and up to two years thereafter it reduces to \$5.00 per day. Under this special diversion program DOC will pay the program at a rate of \$15.00 per day for the first three months, \$10.00 per day for the next three months, \$10.00 per for the next six months thereafter and then \$5.00 per day up to a period of two years.

In 2005 DOC had 999 new diversions. DOC is currently paying for reimbursing for over 1700 diversions. Also in an effort to expand community corrections the department is looking forward to additional funding that it will receive for 2006. With that additional funding the department intends to bring on additional programs. Some of these programs have submitted a plan to DOC and others are in the process of submitting a plan. Those currently include Limestone, Blount, Madison, Butler, Lowndes, Crenshaw, and Colbert counties. Currently there are 30 counties that operate community corrections programs.

### **Community Corrections Association Update**

Joe Mahoney, President, Alabama Association of Community Corrections presented the Commission with the community corrections update. Mr. Mahoney stated that community corrections has about 1700 diversions presently and the number continues to grow. There are 3 million dollars available for community corrections for FY06.

Community corrections programs add resources to the criminal justice system and provide judges with additional sentencing options. Mr. Mahoney noted that counties are using community corrections as an umbrella and under that umbrella of community corrections are several types of programs including drug courts and mental health courts.

Mr. Mahoney asked the Commission to keep in mind that as sentencing practices change, particularly on the front end, these programs actually divert is prison bound offenders into other programs. The programs often include a client specific plan approved by the judge as an alternative to prison. On the back end, offenders may be released from prison to community corrections programs, allowing for a more successful transition to the “free world.” Both aspects of the community corrections concept adds to the continuum of punishment envisioned by the Alabama Sentencing Commission.

Mr. Mahoney stated that The Community Corrections Association is grateful to the Commissioner of Corrections for appointing Jeff Williams as the Director of Community Corrections within DOC. Mr. Williams also serves on a committee for standards and practices with the Alabama Community Corrections Association to work on standards and policies for community corrections programs.

### **New Sex Offender Act**

Ms. Flynt reported on the changes in the sex offender statutes. The new Act defines sex offenses and includes enticing a child (under the enticing a child under 16 years of age). Also included are pornography offenses involving persons under 17 years of age. Otherwise, the o sex offenses affected are those committed against children under 12 years of age. The Act sets mandatory minimum sentences for child sex offenses including a minimum mandatory of 20 years for a class A felony involving a child under the age of 12 and a minimum 10 years for a class B felony..

Ms. Flynt also noted there is some confusion in the Act concerning whether probation is an available disposition of child sex offense cases. In one part of the Act, probation is prohibited for any child sex offense. In another section of the Act, however, probation is

prohibited only for class A and B felonies. A third section of the act authorizes probation for class C felony sex offenses. This confusion will have to be addressed by the courts. The Act also adds a 10 year post release supervision for all Class A sex offenders who committed the offense against a child under the age of 12, for pornography involving children under 17, and for enticing a child under the age of 16. This supervision includes electronic monitoring added to the cost of supervision.. Notably, according to national statistics most child sex offenses occur at the defendant's house.

Ms Flynt reported the Legislative Fiscal Office has requested an impact statement this Act. The original impact statement, completed while the bill was pending in the legislature, was given to the Fiscal Office but not distributed. In the future, all of the Commission's impact statements will be given not only to the Legislative Fiscal Office but also to the chairs of the primary committees and to the key legislators. The impact statement was not considered it when with the bill.

Bennet Wright, Statistician to the Sentencing Commission explained it was difficult to address the impact of the sex offender legislation based on available data. The major problem is that the bill pertains to child sex offenders with a victim under the age of 12. and there is no readily available information for sex offenders with a victim under the age of 12. The Sentencing Commission had to extrapolate this information from available data. The DOC provided a list of everyone that was incarcerated with a victim under the age of 17. The Commission staff then obtained incident report data from CJIS on the number of victims under the age of 17 and victims under the age of 12. Mr. Wright stated that he then did a simple proportion and applied that to the number of people that are currently incarcerated with a victim that was under the age of 17. He came up with an approximation of about 58 people that will be incarcerated next year for a child sex offense with a victim under the age of 12.

This bill is specific enough that people under the different classes get specific penalties. Mr. Wright stated that in order to determine the number of people that would fall under Class A, B and C, he looked at the DOC files containing currently incarcerated sex offenders and came up with the percentage that were incarcerated for each class, A, B and Class C felonies. That percentage was applied to the original 58.

Once this bill goes into effect the impact won't be seen from the Class B felons for roughly another 4 or 5 years. The impact won't be seen for Class A felons for another 11 or 12 years. After the impact becomes effective the prison population and the cost to the DOC will start to rise dramatically at about 2.2 million dollars per year.

Mr. Wright stated that this analysis does not include the cost of the mandatory post release supervision required for all Class A child sex offenders. Mr. Segrest noted that, while the bill requires the offender to help pay the cost of electronic monitoring but does not address indigent offenders who cannot pay this cost. Ms. Flynt suggested that under the Act it would appear that Pardons and Paroles would bear this cost.

## **New Business**

Chairman Colquitt announced the next meeting of the Commission is scheduled for Friday, January 6, 2006.

Chairman Colquitt mentioned that the Alabama Law Review just published a 40 -45 page critical analysis of the Alabama criminal code after 25 years. The criminal code came into being January 1, 1980. The author discusses some of the tattered edges that have developed over the last 25 years especially through the influence of appellate court decisions including those of the U.S. Supreme Court, the Alabama Appellate Courts, etc. He stated that reprints are available if anyone is interested he will send them a copy.

There being no further business the meeting was adjourned.